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**A JOINT LEGAL SERVICES AGENCY AND
A JOINT OPERATIONAL LAW PRACTICE:
THE SERVICES' JUDGE ADVOCATES AND LAWYERS
MOVE TOWARD THE NEXT CENTURY**

BY

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A JOINT LEGAL SERVICES AGENCY
AND
A JOINT OPERATIONAL LAW PRACTICE:
THE SERVICES' JUDGE ADVOCATES AND LAWYERS
MOVE TOWARD THE NEXT CENTURY

AN INDIVIDUAL STUDY PROJECT

by

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Project Advisor

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INTRODUCTION

In a time of downsizing and of significant constraints on all resources, Senator Sam Nunn and the Administration have called on the Services to completely review roles and missions, particularly focusing on those functions which appear to be duplicative, e.g. legal support and services. In a Floor Speech on July 2, 1992, Senator Nunn specifically challenged the Services to streamline and consolidate, to eliminate needless "administrative elements," and to provide an end product which is "best for America."¹ Senator Nunn did not tell the Services what to do. Rather, he provided a clear mandate-- either study, propose, and be prepared to implement an approach to consolidated legal services or be included in a Department of Defense (DOD) organization, such as the Congressionally-mandated Defense Legal Services Agency.² However, consolidation is not the only challenge facing the Services' judge advocates and lawyers.

While consolidation of legal services and support in some areas may be realistic and effective, it may not best facilitate the Services providing legal support to their operational forces deployed and employed around the World. With an increased emphasis on unity of effort and interoperability, each Service's Judge Advocate General's Corps or Legal Department must also determine how to best organize and train to ensure that effective operational law support is provided in the joint environment. Ultimately, as the Armed Forces continue to draw down, effective consolidation of

some legal support and services and an increased emphasis on joint operational law can ensure prompt, timely, and effective legal support and services into the Twenty First Century.

The ensuing discussion focuses on the dual challenges--consolidation and increasing operational jointness. Part One provides both a discussion and a model by which the Services' Judge Advocate General's Corps and Legal Departments may implement a time-phased consolidation of legal support and services. For purposes of my model, that consolidation may be accomplished by 1 October 1995. Part Two provides both a discussion and a model by which the Services may enhance their ability to provide operational law support in the joint environment.

PART ONE-- TOWARD A JOINT LEGAL SERVICES AGENCY

The task of consolidating legal services and support is both formidable and important. In order to effectively accomplish it, the Judge Advocate General's Corps (JAGC) of the United States Army, United States Navy, United States Marine Corps, and the United States Air Force, and the lawyers of the United States Coast Guard must take an insightful look at their own organizations, their roles and their missions. As part of the analysis, each must determine the possible issues associated with consolidation and consider the key assumptions which will effect the process. Finally, each Service must determine which functions (roles and missions) lend themselves to consolidation, how and when

consolidation may be systematically and effectively achieved, and the result which should be achieved. Two recent Defense Department "consolidation" studies provide a framework from which the Services may begin their analysis.

In the Fall 1990, Defense Management Review (DMR) II, Additional Initiatives, required the Army and other Services to address two specific proposals designed to reduce apparent redundancy and inefficiency in legal support and services--consolidation of all claims headquarters,³ and consolidation of certain headquarters functions, such as recruiting, training and personnel management.⁴ A quick review of each proposal, the Services' response, and the ultimate resolution is instructive in identifying the possible costs and issues associated with a related issue of consolidation of all legal support and services.

The proposal for a consolidated claims headquarters envisions the establishment by Fiscal Year 1993 of a single Department of Defense (DOD) facility under the oversight of an Assistant Secretary for Defense. That facility would replace the separate Army, Navy, Air Force, and Marine Corps claims "headquarters," the largest of which is the U.S. Army Claims Service at Fort Meade, Maryland. That facility would include all Service claims headquarters, the Tort Branch of the Army Litigation Division, and Navy Admiralty, but would not include field claims offices because they are an "integral part of the mission of the Staff Judge Advocate." While recognizing that numerous statutes, including Title 10, United States Code, would have to be changed, the

proposal postulates that a single DOD facility offers greater efficiency and effectiveness, and ensures a savings in appropriated funds and manpower. ⁵

After a detailed examination of each Service's claims operation focusing on the proposal, the Services' JAGC noted a number of deficiencies. First and foremost, the proposal calls for a marked departure from the statutory link of the claims process to Service Secretaries and their respective, The Judge Advocate Generals (TJAG). ⁶ Second, it does not sufficiently take into account the uniqueness of claims handled by each Service. Third, it serves to potentially degrade the claims support required by the operational commander during deployments. Fourth, it ignores the fact that Congress has already decentralized claims funding to each Service. And, fifth, it grossly underestimates the overhead costs associated with a single DOD facility-- facility procurement and renovation, automation restructuring, personnel procurement, training, retraining, and the need to establish regional offices, etc. ⁷ After review and reflection, this Defense Management Review II initiative died.

Based on a premise that downsizing would cause a decline in the need for legal services, a second Defense Management Review Initiative calls for the consolidation of all Services' JAGC headquarters functions geographically close to and in the National Capitol Region into a "joint" consolidated legal office. As envisioned, this office would oversee all judge advocate and lawyer recruiting, training, and personnel management, and could

"cross-level" in order to fill a shortage in a particular Service.⁸

Again the Services conferred and provided a reasoned critique. First, the proposal provides no cost savings, but merely imposes another bureaucratic layer. Each Service TJAG must still, by law, be involved in training, assigning, and supervising attorneys assigned to their Service. Further, each Service TJAG must ensure that competent legal advice and assistance are provided to their Service.⁹ Second, Service judge advocates and lawyers are trained to advise their commanders on service unique regulations, customs, and issues. They are not yet fungible assets who can be placed into any legal position regardless of Service. Third, the Services use their own regulations, rules, and procedures in approaching many functional areas-- Civil Litigation, Administrative Law, International and Operational Law, Criminal Law, Acquisition Law, Labor Law, etc. Fourth, the proposal conflicts with each Service's established attorney-client relationships and professional ethical practice. The proposal ignores current command relationships and separate Service interests. Further, it may serve to confuse the rules concerning the responsibility of a supervisory attorney in a particular command or office. Most importantly, it conflicts with the Title 10, United States Code, statutory relationships prescribed for the Service Secretaries, their General Counsel, the Service Chiefs (including the Commandant, United States Marine Corps), and their respective designated legal advisors.¹⁰ After review and reflection, this proposal appeared to die in December 1990.

These Defense Management Review Initiatives did not address all of the issues and costs associated with consolidation. Based on a more in-depth study and analysis, each Service can provide the exact costs and issues it faces. However, the prior proposals are useful in that they do highlight a few general propositions concerning the costs and issues associated with a larger consolidation.

First, a consolidation of all legal services may have overhead costs which outweigh, at least initially, any perceived resource savings. Further, consolidation may require significant statutory, regulatory, and procedural change which will erode the current relationship between and the responsibility of the Secretaries, the Service Chiefs and their legal advisors. Depending on the breadth of change, commanders may no longer have the same relationship with their staff judge advocates, and the staff judge advocate may be unclear as to who is responsible for providing legal support and services in a given situation. In addition, consolidation may ignore the unique aspects of each Service and its clients, thereby adversely impacting legal support and services at the Service headquarters and the operational field level. Finally, consolidation, particularly as in an Office of the Secretary of Defense (OSD) Defense Legal Services Agency, may significantly reduce the role of uniformed judge advocates in providing legal support and services in the future.

While these general costs and issues are valid, they may not be dispositive of the first challenge. Further, even though the

Chairman of the Joint Chiefs of Staff has recommended against the consolidation, Senator Nunn and others may require that the Services proceed.

Although the Services should proceed methodically and cautiously toward full consolidation of legal services and support, it is in our best interests to devise and to prepare to implement a plan for streamlining and consolidating legal support and services within the Military Departments and the Coast Guard. That plan should be based on articulable assumptions which are in the best interests of the Services and Our Nation. That plan should provide a systematic approach which allows the Services to gradually consolidate certain functional areas at the headquarters and, as appropriate, field level. Further, such a plan should provide a methodology to establish, evaluate, implement, and validate a prototype Services-directed agency, such as a "Joint Legal Services Agency."

Although not exhaustive, seven important assumptions underlie the plan to consolidate legal support and services within the Military Departments.

First, the overhead costs such as manning, training, automation, and facility acquisition identified by the Services in the prior Defense Management Review Initiatives remain valid, although not dispositive of the issue.

Second, legal services will not decrease during downsizing. As military members and their families leave active duty the legal assistance and the claims workload will increase, at

least initially . As installations and bases close, environmental and associated legal issues will predominate.

Third, the Services will receive new domestic roles and missions which present potentially complex and significant legal issues. Commanders must determine what support may be rendered to local law enforcement and other governmental officials, and how to derive "training" from the non-traditional use of the military. ¹¹

Fourth, the traditional statutory roles and responsibilities of the Secretaries, the Service Chiefs and their legal advisors will be changed in the future.

Fifth, initially, consolidation will focus primarily on redundancy and duplication in headquarters and administrative elements.

Sixth, commanders will retain the capability to receive some Service-unique legal support and services.

Seventh, the consolidation of legal support and services within the Military Departments will be accomplished within existing, or more severe, resource constraints.

Given these seven basic assumptions, the Services may take a number of viable approaches to the consolidation of legal support and services within Department of Defense. My proposal, a four-phased approach culminating in the establishment of a Service-directed agency, offers one way to systematically and effectively achieve consolidation by 1 October 1995. Each phase of the proposal is a major step in the consolidation process; each provides the opportunity to study the next major step and to review

a previously completed step or steps; and, each phase can be extended or contracted as required. The result will be a Joint Legal Services Agency.

Phase I, which runs until 30 September 1993, is the "Plan for Executive Agency" phase. During this phase, each Service JAGC or Legal Department determines those functions for which it can best serve as Executive Agent for all Services, identifies the costs and issues associated therewith, and develops a draft plan for serving as the Executive Agent. Such a plan should include, at a minimum: policy guidance; recommended regulatory and procedural changes; budget guidance (if appropriate); manning guidance, including provision for joint-service staffing; and, implementing instructions which can be issued to the Services' field offices and agencies.

Each Service's Executive Agency plan should then be submitted for review and final approval to a Joint Legal Consolidation Committee, comprised of The Judge Advocate Generals (or their designees), the Legal Advisor to the Chairman, Joint Chiefs of Staff, and the General Counsel (or their designees) of the Department of Defense and each Military Department. This Committee should review the plans, determine which Service will serve as Executive Agent for a particular function(s), determine which functions will remain an individual Service responsibility, and report to the Service Secretaries, the Service Chiefs, the Chairman, and the Secretary of Defense. The approved Joint Service Executive Agency Plan should then be briefed to Congress.

Also during Phase I, the Joint Legal Consolidation Committee should initiate planning to designate a Joint Legal Services Agency (Provisional). The Army The Judge Advocate General, who already supervises through an Assistant Judge Advocate General a Legal Services Agency at Falls Church, Virginia, should serve as Executive Agent for the Joint Legal Services Agency (Provisional). The Executive Agent, in coordination with The Judge Advocate Generals of the Air Force and Navy, and the Staff Judge Advocate to the Commandant of the Marine Corps, should begin to develop a plan to consolidate, in the joint agency, responsibility for legal training, military criminal and appellate practice, the trial defense services, the military judiciary, and any other areas deemed appropriate. This plan should be completed, approved, and ready for implementation not later than 1 October 1993.

Phase II should begin on 1 October 1993 and extend at least until 30 September 1994. Phase II is the " Joint Legal Services Agency" phase. It provides an opportunity to test the Joint Service Executive Agency Plan in practice, while continuing to refine the provisional Joint Legal Services Agency concept.

The Joint Service Executive Agency Plan should be implemented for a period of one year, with the option to extend it as needed. Under this plan, each Service should assume Executive Agent responsibility for one or more functional areas.

For example, the Army, which has a major claims headquarters at Fort Meade, Maryland, and a large Litigation Center in Northern Virginia, should serve as Executive Agent for Claims and Civil

Litigation. The Air Force, using its Legal Services Agency as a nucleus,¹² should serve as Executive Agent for Labor Law, Patents, and Regulatory Law. The Navy, which has a significant procurement activity in Rosslyn, Virginia, and the overall responsibility for admiralty matters, should be designated the Executive Agent for Acquisition Law and Admiralty. The Marine Corps which currently uses an East and West Coast Area Counsel concept for many civil law and environmental matters should be designated the Executive Agent for Environmental Law. Finally, in keeping with one of its peacetime missions, the Coast Guard should be designated the Executive Agent for coordinating Law Enforcement and Counter-drug Operations.¹³ Other functional areas should either be assigned to one Service, or designated to remain an individual Service JAGC responsibility.

Throughout this phase, the Joint Legal Coordinating Committee, using periodic In Progress Reviews and After Action Reviews, should continually monitor the actual implementation of the Joint Service Executive Agency Plan and the progress toward a provisional organization. Adjustments to the plan should be made, and a new Executive Agent should be designated as necessary.

The Joint Legal Services Agency (Provisional) should become operational during Phase II and be collocated with the United States Army Legal Services Agency (USALSA) in Falls Church, Virginia. While many organizational structures are possible, this Agency should be commanded by a Service Assistant The Judge Advocate General (a Major General), or an Assistant Judge Advocate

General (a Brigadier General). Command of this Agency should rotate between the Services on a periodic basis (every two to four years.)

Based on guidance from the Joint Legal Coordinating Committee, the Commander, Joint Legal Services Agency (Provisional), should prepare to implement the consolidated legal support and services initiatives not later than 1 October 1994. Each Service JAGC or Legal Department should be represented in this planning process to ensure that the final implementation will meet Service-specific needs no matter which Service has overall responsibility.

As an example, The Army Judge Advocate General's School (TJAGSA) may be designated to provide basic, advanced, and specialized legal training to all judge advocates or lawyers, warrant officers, noncommissioned officers, and enlisted specialists. While the school is an Army responsibility, each Service JAGC or Legal Department should have input into the curriculum and appropriate representation on the staff and faculty.

In the long term, the Services should consider establishing a Joint Judge Advocate General's School at TJAGSA. That school conducts a Judge Advocate "Advanced" Course and other continuing education programs which are attended by judge advocates and lawyers from all Services and many foreign countries. Further, TJAGSA is located adjacent to the University of Virginia School of Law, an institution which offers advanced instruction in functional areas of interest to the Services' Legal Corps.

In determining an organizational structure, the Commander,

Joint Legal Services Agency (Provisional), should also designate functional area directorates, each overseen by a Service Assistant Judge Advocate General, a senior judge advocate, or a senior departmental civilian. While others may be considered, at a minimum, four directorates should be designated.

The Civil Law and Litigation Directorate will be responsible for claims, civil litigation, acquisition, procurement fraud, admiralty law, labor law, environmental law, patent and regulatory law. During Phase III, this Directorate will oversee the work already begun as part of the Joint Services Executive Agency Plan.

The Criminal Trial and Appellate Directorate will be responsible for trial prosecution, trial defense, the military trial judiciary, and the appellate practice. During Phase III, this Directorate will manage the consolidated initiatives already studied and planned, including the use of Joint Regional Trial Centers to handle the judicial, prosecution, and defense functions.

The Operations and Training Directorate will be responsible for the administration, automation, and personnel management of the Joint Legal Services Agency and its regional offices. During Phase III, it will also oversee the joint legal training conducted at the Service's separate "law schools," or at a newly-established Joint Judge Advocate General's School, and it will recommend and assist in the development of additional training which may be required by all Services' officers, warrant officers, enlisted, and civilian personnel.

The International and Operational Law Directorate will be

responsible for developing a joint approach to providing legal support and services to the warfighting Commanders-in-Chief and their subordinate operational commanders. During Phase III, in coordination with the Legal Advisor to the Chairman and the Services, this Directorate will publish and implement Joint Operational Law Doctrine. (Part Two of this paper will provide a more detailed discussion of the joint operational law practice.)

Phase III should begin on 1 October 1994 and extend until 30 September 1995. The primary purpose of this phase should be to test a fully-functioning Joint Legal Services Agency, including the use of regional offices to oversee and support the Services' bases, posts, camps, and stations. Importantly, during this phase the Joint Legal Coordinating Committee should also finish the work necessary to validate the Joint Legal Services Agency as a more effective and efficient approach to consolidation than under the DOD Defense Legal Services Agency.

Phase IV should begin 1 October 1995 and continue indefinitely. Phase IV should usher in the full implementation of the Joint Legal Services Agency/ Joint Service Executive Agency Plan refined and validated during the previous phases.

As this model demonstrates, the Joint Legal Services Agency provides one means by which the Services' Judge Advocate General's Corps or Legal Departments can achieve consolidated legal services on their own terms and timetable. The Joint Legal Services Agency recognizes the statutory responsibilities of the Services' senior legal leadership to their clients and to the attorneys who provide

legal support and services to each Service. It does not denigrate the ability of each Service to practice within the major functional legal areas, and it preserves the Service-uniqueness necessary to support the operational commander. While the Agency does bring administrative control of most functions under one headquarters element, it should continue to emphasize responsive support to the operational commander and the field.

Finally, the Joint Legal Services Agency eliminates redundancy and inefficiency in the headquarters and other administrative elements without total restructuring and bureaucratic layering. The result is a Joint Legal Services Agency which answers Senator Nunn's call to do that which is best-- to consolidate legal services and support--for Our Nation.

However, consolidation is only the first of two important tasks. The post-Cold War World requires a military which is capable of responding, in a joint or combined manner, to a myriad of potential regional conflicts and operations other than war, such as peacekeeping or peacemaking. These military forces must be supported by judge advocates and lawyers who understand their clients, the Service-unique issues confronting their commanders, and the broad range of legal issues attending joint and combined operations.

Unlike many of their predecessors, these officers must be able to effectively function in an environment where potential legal questions know no color of uniform, and range from freedom of navigation, to rules of engagement, to "policy" considerations.

Therefore, in addition to the challenge of consolidation, the Services must also address their ability to provide operational law support to the military forces which will operate in a joint or combined environment in the future. The ensuing discussion presents one approach the Services may use to face the second challenge-- the enhancement of their ability to provide operational law support in the joint environment.

PART TWO-- TOWARD A JOINT OPERATIONAL LAW PRACTICE

As a start point, the Services' Judge Advocate General's Corps and Legal Departments must make an insightful examination of the missions assigned to each Service, and how they, doctrinally, provide operational law support to their respective Armed Force today. Next, each Legal Corps must determine those enhancements which may better facilitate providing operational law support in the future. And finally, the Services must agree on an approach, or model, by which they can better prepare their operational law attorneys for a "jointness" which best serves the needs of Our Nation.

The Army, Navy, Air Force, Marine Corps, and Coast Guard, each have unique roles and missions established by statute, as further refined by Department of Defense (DOD) Directive 5100.1, Functions of the DOD and its Major Components. Based on these broad, enduring roles and missions each Service has further defined and

refined its main functions into a warfighting philosophy--its doctrine. Each Service has then attempted to capture its doctrine in a manual or some other publication which can be disseminated to its members.

The Army is responsible for "prompt and sustained combat incident to operations on land."¹⁴ Doctrinally, the Army has Field Manual 100-5, Operations, which provides guidance for the prosecution of land operations through conflict termination.¹⁵ That guidance is currently under revision to ensure that it reflects the operational realities of today's unstable, regional-contingency World.

The Navy is responsible for "prompt and sustained combat incident to operations at sea."¹⁶ Based on the demise of the Soviet Union as a viable "blue water" threat, the Navy has now focused its attention away from prosecution of major naval battles at sea. In partnership with the Marine Corps and Coast Guard, the Navy now prepares to fight the naval battle in the littoral and to project power from the sea. This new naval doctrine has recently been published in a paper appropriately titled "From the Sea."¹⁷

The Air Force is responsible for "prompt and sustained offensive and defensive air operations."¹⁸ The Air Force has developed a broad "offensive and defensive air operations" philosophy, its "Global Reach-Global Power" White Paper.¹⁹ Now, Basic Aerospace Doctrine of the United States Air Force, Air Force Manual 1-1 (Volumes I and II), provides guidance for the conduct of the aerospace roles and missions--aerospace control, force

application, force enhancement, and force support.²⁰

The Marine Corps is responsible for "service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign."²¹ In partnership with the Navy and Coast Guard, the Marine Corps will be an essential part of the power projection package into the littoral. Recognizing this, the Marine Corps has refined its warfighting philosophy into Fleet Marine Force Manual 1-1, Campaigning, and Fleet Marine Force Manual 1-2, The Role of the Marine Corps in the National Defense.²²

And, the Coast Guard is responsible for maritime law enforcement and rescue activities and becomes part of the United States Navy during time of war or other national emergency.²³ As the Coast Guard mission during time of peace is essentially law enforcement, its doctrine is primarily contained in the COMDTINST M16247 (series) Maritime Law Enforcement Manual Volume I Title 14, U.S. Coast Guard,²⁴ and other statutes and conventions pertaining to maritime operations. During time of war, as authorized by 14 United States Code Section 2, the Coast Guard becomes a specialized force under the Navy and provides command of the Maritime Defense Zone.²⁵ Given its other duties with the Navy, the Coast Guard must also be prepared to assist in the projection of power into the littoral. Therefore, Coast Guardsmen must also understand the Navy's doctrine--"From the Sea."

Using these missions and doctrinal publications, each Service devotes significant time and effort to ensure that their

commanders, operators, and logisticians understand and apply Service-unique doctrine. These commanders, operators, and logisticians are expected to translate doctrine into tactics, operations, and strategy which will enable their Service to contribute to the successful accomplishment of a desired political and military end.

Similarly, each Service's Judge Advocate General's Corps or Legal Department has attempted to develop "legal" doctrine which supports its Service's broad statutory roles and missions and doctrine. In keeping with their legal doctrine, each Service has assigned legal advisors to duties and responsibilities which facilitate the lawful prosecution of land, sea, and air operations around the World. Regardless of Service, these legal advisors practice "operational law, " " that body of domestic, foreign, and international law that impacts specifically upon the military operations of U.S. Forces in combat and peacetime engagement," ²⁶ or, "the application of domestic, international, and foreign law to the planning for, training for, deployment of, and employment of United States military forces." ²⁷

While these operational lawyers are faced with similar challenges and issues, they are also presented with those which are Service-unique. To understand how each Service is similar, and how each is different, one must examine each Service's current approach to the practice of operational law. A good framework for analysis is to examine each Service's operational law "doctrine", its required schooling or training, additional training which is

required or recommended, and the selection and assignment process. First, we should examine the Army Judge Advocate General's Corps.

The Army Judge Advocate General's Corps derives its operational law doctrine from Field Manual 27-100, Legal Operations; Field Manual 27-10, The Law of Land Warfare; the Operational Law Handbook 2d Edition, and various references and training publications prepared by its Major Commands, such as Forces Command and the Army Special Operations Command.²⁸ In essence, Army doctrine calls for the providing of legal services, including operational law support, as far forward as possible in the operational area.²⁹ Operational law support is to be provided by the Staff Judge Advocate, the Command Judge Advocate, the International and Operational Law Team of the Army Reserve's Judge Advocate General's Service Organization, and the brigade legal advisor.³⁰ While other legal personnel, such as those assigned to Civil Affairs units, may assist, the Commander's primary legal advisor provides operational law support. Unlike other attorneys, Army judge advocates do not normally perform non-legal duties.

The Army JAGC does not require its operational lawyers to receive any special training, and considers that all judge advocates should be capable of performing operational law duties. However, since most operations occur in overseas areas, the Army JAGC has generally assigned school-trained and skill-identified International Lawyers to senior operational law billets at The Office of the Judge Advocate General, and The Army Judge Advocate General's School. While some judge advocates, based on

their extensive operational experience, have undertaken these policy and training roles without an advanced degree, the preference still appears to be to have an International Law "specialist."³¹

During their initial entry training, Army judge advocates receive basic instruction in international and operational law matters. That instruction focuses primarily on the broad bases of international law, the law of land warfare, and statutes and conventions which affect the law of land warfare. Some training is provided in targeting and weapons, but the primary purpose of this instruction is to lay the groundwork for later international and operational law academic and on-the-job training.

Upon attendance at the Graduate Course, more senior judge advocates (captains and majors) receive extensive instruction in international and operational law matters. That instruction includes a more in-depth discussion of the law of land warfare, targeting, rules of engagement, and Operational Plan review. It also exposes the judge advocate to intelligence law, noncombatant evacuation operations, and the issues associated with operations other than war.

Graduate Course students who have an interest in this area, or who are scheduled for operational law assignments upon graduation,³² may also enroll in electives such as the law of the air and space, the law of the sea, advanced international law, national security law, and advanced topics in the law of land warfare. As with the Basic Course curriculum, the goal is to

produce a "generalist" judge advocate or lawyer who is academically prepared for the international and operational law practice, but not necessarily an operational law expert or specialist.

For those Army judge advocates serving in operational law billets with maneuver units, The Army Judge Advocate General's School also offers a number of Continuing Legal Education courses. In addition to special seminars and workshops, an Operational Law Seminar and a Law of War Workshop, both one-week in length, provide an opportunity for judge advocates to deal with the practical implications of operational law issues and concerns their commands encounter.

The Operational Law Seminar is designed to address the contemporary application of domestic and international law to the planning and execution of peacetime and combat operations. Attendees discuss legal and policy issues associated with Rules of Engagement, counter-drug operations, disaster relief and humanitarian assistance operations, special operations, and security assistance. The Law of War Workshop, which is heavily-oriented toward land combat, provides a basic knowledge of the law of war, the practical aspects of mission planning and accomplishment, and the law of war training program.

In addition, selected Army judge advocates may attend the Air Force Judge Advocate General's School's Operational Law Course or the Naval Justice School's Law of Military Operations Course. Both courses provide extensive training in the operational law aspects of air and sea operations, respectively. The Air Force's course is

similar to the Army Operational Law Seminar in length and scope but also includes instruction on the Joint Chiefs of Staff and the Unified Command structure. The Navy's course, which is two-weeks in length, includes instruction on National Security Law and extensive training (one week) on Rules of Engagement.

Army judge advocates assigned to special operations units may also participate in workshops and other training programs provided by the Staff Judge Advocates, United States Special Operations Command, United States Army Special Operations Command, United States Army Special Forces Command, and United States Army Civil Affairs and Psychological Operations Command.³³ These courses and programs deal with those issues and concerns which specifically impact upon our conduct of special operations throughout the World.

Since all Army judge advocates must be capable of practicing operational law, the Army Judge Advocate General's Corps does not have a formal selection or assignment process. Special training, education, operational experience, maturity, and demonstrated leadership are all considered when selecting a judge advocate to fill an operational law billet, whether as a Staff Judge Advocate, as a Chief of International and Operational Law, or as a legal advisor to a brigade maneuver unit. Based on Service legal doctrine, the Army Operational Lawyer is trained to support the Army in its prosecution of "land operations."

The Commander's Handbook on the Law of Naval Operations, Naval Warfare Publication 9A, Fleet Marine Force Manual 1-10,³⁴ serves as the doctrinal basis for the practice of operational law in the

three Sea Services-- the Navy, the Marine Corps, and the Coast Guard. That Handbook provides a quick, ready reference to the major issues confronting the operational commander and his or her legal advisor. The Coast Guard supplements this guidance with publications pertaining to its law enforcement function.³⁵

Unlike the Army, the Sea Services' lawyers are routinely involved in the practice of operational law. Navy, Coast Guard, and embarked Marine lawyers continually serve aboard ships in international waters. Unlike their Army counterparts, these operational lawyers face a daily real-life training exercise in which issues pertaining to freedom of navigation, rules of engagement, and interdiction are encountered. Therefore, the Navy, Marine Corps, and Coast Guard have not strictly followed the Army's approach to providing operational law support.

A Staff Judge Advocate at the Fleet or Force level as well as operational law attorneys in Code 10 , the International Law Division of the Office of the Chief of Naval Operations, are available for operational law support. However, the Navy operational lawyers placed with each Battle Group and with each Carrier Battle Group are ultimately responsible for providing legal advice on operational matters.³⁶ Unlike their Army counterparts, many of these Group judge advocates also perform non-legal duties, such as standing watch in the combat control center, during deployment.

Doctrinally, Marine Corps operational lawyers are assigned to the Legal Service Support Section of the Force Service Support

Group and to the Office of the Staff Judge Advocate in a Marine Division or Air Wing. Marine Corps operational lawyers are also assigned to Headquarters Marine Corps and other staffs.

Although the Marine Corps has units and organizations similar to those of the Army, Marine forces generally deploy as a Marine Air-Ground Task Force. The Force Service Support Group, the Division, and the Air Wing all provide forces to the Marine Expeditionary Force which is the command element for a Marine Air-Ground Task Force. Upon deployment, the Officer-in-Charge, Legal Service Support Section, not the Staff Judge Advocate, assigns the judge advocates who will support the Task Force. These operational lawyers directly advise the Commanders of the subordinate units of a Marine Expeditionary Force, the Marine Expeditionary Unit, or Marine Expeditionary Brigade.³⁷ Like their Navy counterparts, Marine judge advocates may also perform non-legal duties during the deployment and may be rotated into non-legal billets during their careers.

While the Navy and Marine Corps have judge advocates, the Coast Guard has only line officers. While a Coast Guard lawyer may perform legal duties as part of the Maritime and International Law Division at Coast Guard Headquarters or at the Command and Operational Law Branch of a Maintenance and Logistics Command, most operational law is practiced as part of an officer's normal line duties.³⁸ Like judge advocates in the other Sea Services, the Coast Guard lawyer may perform significant non-legal duties throughout a career.³⁹

Although none of the Sea Services requires any specialized training to perform operational law duties, the Navy does offer a special personnel identification coding for those with an advanced degree in International Law. While having an International Law specialty is not required for duty with a Battle Group or Carrier Battle Group, it may be necessary before assignment to more senior positions, such as in the International Law Division.⁴⁰ Neither the Marine Corps nor the Coast Guard formally recognize special schooling in the areas of international or operational law.⁴¹

Navy and Marine Corps judge advocates and Coast Guard lawyers receive their initial international and operational law training at the Naval Justice School, Newport, Rhode Island. Like similar training provided to Army judge advocates, this basic legal course training is designed to familiarize the new Sea Service attorney with the basics of international law and the law of the sea. As with the Army's basic legal course, little practical work is provided at this stage.⁴²

While the Sea Services do not have an in-Service Graduate Course, select Navy, Marine, and Coast Guard lawyers do attend the Army's Graduate Course at The Army Judge Advocate General's School. Like their Army counterparts, these officers receive extensive international and operational law instruction and are eligible to enroll in the electives offered. Prior to serving in operational billets, Sea Service lawyers are also required or encouraged to attend operational law continuing education courses offered by the three Service "law schools."

Prior to serving as a Battle Group judge advocate, Navy lawyers are scheduled for the Law of Military Operations Course.⁴³ Other Navy, Marine, and Coast Guard lawyers also attend that course, as well as those offered by the Army and the Air Force Judge Advocate General's Schools. As with their Army counterparts, Sea Service lawyers receive some operational law training in their pre-Staff Judge Advocate course. Further, selected Navy lawyers who work with their special operations forces--the SEALs--also attend workshops and seminars sponsored by United States Special Operations Command in Tampa.

While the Sea Services do not have a selection or assignment process, personnel coding for an advanced degree, experience in international law and success in the last operational law billet appear to be prerequisites to certain positions, at least in the Navy.⁴⁴ As previously discussed, Marine and Coast Guard lawyers rotate between operational and legal billets. Like any other officer, their assignments are based upon maturity, demonstrated leadership, technical expertise, experience, and potential.⁴⁵ From the perspective of the Marine Corps and the Coast Guard, an officer with considerable line experience, in addition to legal training, can be an invaluable asset to the practice of operational law.

In keeping with Service doctrine, Navy operational lawyers are trained to support the Navy in the prosecution of operations "from the sea." Marine Corps operational lawyers assist the Corps as it conducts the land part of a naval campaign. Coast Guard lawyers assist in the prosecution of a myriad of law enforcement,

rescue, and defense missions in time of peace and war.

Air Force operational law doctrine is contained within Annexes P and R to the Service War and Mobilization Plan (currently under revision), and Air Force Publication 110-31, International Law--The Conduct of Armed Conflict and Air Operations.⁴⁶ Air Force doctrine calls for the providing of operational law support to all deployed units, and the positioning of operational law attorneys with the fighting air elements within a theater. Accordingly, operational law attorneys serve at Headquarters Air Force, Unified Commands, Major Commands, Numbered Air Forces, and Wings.⁴⁷

While the Air Force does not require any specialized training, attorneys who receive an advanced degree in International Law are normally placed in "utilization" assignments, many of which involve the practice of operational law.⁴⁸ Like the Army, the Air Force considers that all of its lawyers must be prepared to practice operational law. While certain key policy positions may require or desire an "International-law coding," every Air Force judge advocate must be capable of advising the operational commander.⁴⁹

Like the other Services, new Air Force judge advocates receive some instruction in international and operational law during basic legal training at Maxwell Air Force Base. This training provides a general overview of international law, the law of armed conflict as it applies to air operations, and Air Force roles and missions.

More senior judge advocates may be selected to attend the Army's Graduate Course, where they participate in international and operational law instruction, including the elective program,

with their Service counterparts. Some Air Force operational lawyers also participate in the Operational Law Seminar and Law of War Workshop offered by the Army, and the Law of Military Operations Course taught at the Naval Justice School. Recently, the Air Force has developed the Operational Law Course discussed earlier.

The Air Force Judge Advocate General's School requires this Operational Law Course for all Air Force judge advocates going to operational commands and billets and offers the course to the other Service's judge advocates and lawyers. In addition, a short (three-day) International Law Course taught during pre-Staff Judge Advocate training provides updated information on status of forces agreements and other legal issues associated with the stationing of Air Force units abroad.⁵⁰

Like the Sister Services, the Air Force does not have a formal selection or assignment process for operational law positions. Certain key positions at Headquarters Air Force and other Commands require a special expertise in international law. Those positions are filled by officers who have an advanced degree and the practical experience required for success.⁵¹ In accordance with Service doctrine, all Air Force operational lawyers provide support to the Air Force in the prosecution of "offensive and defensive air operations."

From the preceding discussion it appears that each Service's Judge Advocate General's Corps or Legal Department recognizes the importance of the practice of "operational law." Each Service has

instituted a system of Service-unique instruction and training which will enable the judge advocate or lawyer-line officer to advise on the legal issues attendant to the Service's mission, roles and functions. Each Service recognizes the importance of placing qualified and quality operational lawyers in their headquarters and in their field units. Each Service has attempted a cross-pollinization process by opening schools and continuing education courses to operational lawyers of the Sister Services.

However, have the Services gone far enough? To answer this question we must first consider the operational environment that will face future operational lawyers.

Future military operations, whether during war or operations other than war (sometimes termed "peacetime competition"), will demand "unity of effort" and "maximum interoperability."⁵² Except in those rare instances where one Service has the full capability to effectively prosecute the action, the operational environment will require the collective effort of all Services. "Jointness" will be the operational environment within which the Services and the operational lawyer must work. Importantly, the reality of this joint operational environment is clearly recognized in each Services' doctrine.

"The Army will not operate alone. Operations... will always be joint."⁵³ " 'From the Sea: Preparing the Naval Service for the 21st Century,' outlines the shift away from open-ocean warfighting toward joint operations conducted in littoral areas of the world."⁵⁴ The Marine Corps " shall be employed to support and

supplement the other Services; service with other military forces (is) an operational necessity for the future."⁵⁵ And, the "Air Force should be prepared to fight as a member of an interdependent team of land, naval, and aerospace forces." "Special attention should be given to training for joint and combined operations." ⁵⁶

Given this emphasis on "jointness", does our Service-unique operational law doctrine, training, and practical experience prepare operational lawyers for service in the joint environment ? Are our operational lawyers fully prepared to advise the joint commander on the legal issues attendant to the "tactics, techniques, capabilities, needs and limitations of the component parts (all the Services) ?"⁵⁷ Are the Services prepared to provide legal advisors who understand the policy issues and international law aspects of the joint practice? Can the Services produce "generalists" who are well-schooled in military-political issues and international relations, and who are capable of interacting ninety-percent of the time with non-lawyers?⁵⁸

The Services have made a good start. First, the Service JAGCs and Legal Departments now provide attorneys for key legal advisor positions in the Office of the Chairman, Joint Chiefs of Staff, and in the Unified Commands. Further, there have always been a few qualified (normally in international law) field grade attorneys to send to other "joint" billets which must be filled. And, because of the lessons learned from Grenada, Panama, and Desert Shield/Storm, more and more young judge advocates from all Services have been exposed to "joint" operational law issues either by

participation in the operation or in continuing education courses conducted at three Service "law schools."

The Services may also point to the fact that a number of their judge advocates have received Phase I, Joint Professional Military Education (JPME), by virtue of their attendance at Intermediate Service Schools such as Command and General Staff College, or the Air Command and Staff College.⁵⁹ Other Service judge advocates and lawyers receive some "joint" training and experience when working with special operations forces, or as part of a Joint Task Force during a major training exercise such as Ocean Venture, a U.S. Atlantic Command joint training exercise most recently conducted in the Spring, 1992. In addition, some Service judge advocates, including Coast Guard lawyers, receive joint training as legal advisors to the various Joint Task Forces now fighting the war against drugs.⁶⁰

While these initiatives have been useful in exposing some judge advocates to "jointness," operational lawyers serving with their Services, on the Joint Staff, and with Unified Commands believe that the Services can and should do more. In response to a "Joint JAGC Questionnaire",⁶¹ twenty-six operational law attorneys (representing each Service and ranging in grade from O-4 through O-6), have provided candid and insightful comments concerning the current practice of operational law. These officers have also postulated some ways in which the Services may better prepare future operational law attorneys for the joint environment. From their perspectives, the Services can enhance the joint

operational law practice by focusing on five major areas.

First, each Service JAGC or Legal Department must recognize and reinforce the critical role the practice of operational law will have in the future.⁶² Judge Advocates and lawyers from all Services will routinely help plan for the deployment and employment of their forces in support of regional contingencies, humanitarian assistance operations, and peacekeeping or peacemaking operations. Throughout the planning process, the operational law attorney will be a key assistant to the commanders and staffs of our crisis response and forward-committed forces. Therefore, the practice of operational law must be "career-enhancing," not perceived as a lesser practice than other specialized, "pure" legal duties.

Second, Joint Operational Law Doctrine should be developed, published, and implemented.⁶³ Each Service has its own unique doctrine, regulations, and procedures. While there is a legitimate need to retain some uniqueness, the Services should strive for a "standard operating procedure" approach to the practice of operational law. Each Service's operational law practitioner should have a "common ground" on which to meet a counterpart.

Third, while each Service must continue to produce judge advocates and lawyers who are competent to practice Service-unique operational law, there must be an increased emphasis on and understanding of joint operational law practice.⁶⁴ All judge advocates and lawyers must understand the legal issues associated with the deployment and employment of their own forces, and they must be sensitized to the issues facing their counterparts in the

other Services. They need not be the "expert," but must be able to spot the issue, to identify the problem to the commander and staff, and, then, to know where to turn for further assistance in resolving the issue.

Fourth, the Services must ensure that their operational lawyers have the training necessary to practice joint operational law.⁶⁵ If advanced civil schooling in international law will enhance the competency of the operational lawyer, more judge advocates should be enrolled in advanced degree programs.⁶⁶ Further, the Service "law schools" must reevaluate their curriculum to ensure that the Services' uniformed attorneys are taught operational law from the joint perspective during basic courses and advanced schooling. In addition, continuing education courses should include judge advocates and lawyers from all Services and should offer practical exercises which require the identification and resolution of "joint" issues. Finally, more judge advocates should participate in joint training, joint exercises, and joint schooling.⁶⁷

And fifth, operational lawyers from all Services must be able to stay current and share information relevant to the practice of joint operational law.⁶⁸ Operational attorneys should be encouraged to publish articles and treatises in major military law reviews and other publications. A joint operational law bulletin board and a joint handbook should be developed. Finally, the Joint Staff and the Service legal staffs should provide more operational law guidance and information.⁶⁹

These five areas provide a constructive framework from which the Services may continue to build a joint operational law practice for the future. That practice may be enhanced by the Services adopting a model which includes doctrine, which considers schooling and training which will be required or recommended, and which considers a selection and assignment process. The first step must be a joint operational law doctrine.

Joint operational law doctrine should be developed and published by the International and Operational Law Directorate of the Joint Legal Services Agency (discussed in Part One) in coordination with the Services' "law schools." Joint doctrine should be written and available to all practitioners.

Rather than in separate Service-unique manuals, pamphlets, regulations and procedures, all Services' operational law doctrine should be contained in three references-- a Joint Law of Armed Conflict publication and a Joint Legal Operations publication promulgated by the Joint Chiefs of Staff, and a Joint Operational Law Handbook.

Joint Law of Armed Conflict should consolidate Army Field Manual 27-10 (currently under revision), Naval Warfare Publication 9A, Fleet Marine Force Manual 1-10, and Air Force Pamphlet 110-31 into one document which provides the substantive law pertaining to land warfare, the sea, and aerospace operations. Joint Legal Operations, patterned after Army Field Manual 27-100, should provide broad guidance for the conduct of legal operations in the joint environment. The Joint Operational Law Handbook, patterned

after that published by The Army Judge Advocate General's School, should provide the joint operational law attorney with the basic doctrine, the practical guidance, and the expertise required to be able to address "land, sea, air, and special operations" issues.

Doctrinal "updates" should be available on a continuing basis. Each Service should subscribe to a Joint Operational Law Bulletin Board over which operational law attorneys can share and exchange current information and lessons learned. In addition, operational lawyers should be encouraged and required to write for Service legal publications, such as The Army Lawyer, Military Law Review, and The Air Force Law Review. Consideration should also be given to establishing a "Joint Operational Law Newsletter."

In order to effectively disseminate joint operational law doctrine and to ensure competency in the joint operational practice, the Services must also establish a multi-faceted training program. That program should include advanced civil schooling, training at the Services' "law schools," continuing legal education courses, and other non-legal joint training opportunities.

While there are resource constraints associated with advanced civil schooling, more operational judge advocates should have the opportunity to pursue graduate law degrees or other educational programs which will broaden their expertise in international law and other important disciplines. One approach may be to encourage attorneys to enroll in after duty hour courses at local universities, colleges and law schools for which the Government

pays all or a substantial portion of the tuition and fees. Another, may be to send operational lawyers to short courses offered by other government agencies and institutions of higher learning. For example, the Army's Intelligence and Security Command now conducts a symposium on Intelligence Law and Oversight, and the University of Virginia provides a two-week program on National Security Law. Further, although not specifically oriented on the military, law schools such as George Washington University and the University of Washington provide continuing legal education in environmental practice and compliance, international law, business and political relations.

As for military legal training, the Service "law schools" must provide Service-unique and joint operational law instruction to new judge advocates and lawyers, and continue to build on that initial training in subsequent courses and continuing legal education programs. International and Operational Law continuing education courses must be designed to ensure that each Service operational lawyer receives a solid grounding in joint issues, not from a theoretical, but from a practical perspective. These academic courses must also be supplemented by periodic joint operator-lawyer training exercises.

At least annually, Service operational lawyers and selected line officers should come together for an intensive Joint Operations-Legal Seminar and Workshop, rotated between the three "law schools" and operational installations or bases. Expanding on the "Military Operations and Law Symposium," an annual program

sponsored by the Chairman, Joint Chiefs of Staff which has been conducted at various locations for the past decade, this seminar and workshop should offer scenarios which challenge the warfighter and the operational lawyer to work as a "joint team" to produce solutions and plans for operations which span the operational continuum. Computer modeling and wargaming should be included to enhance the experience.

Unified Commands should also conduct periodic joint operational-legal training for their commanders, key staff officers, legal advisors, and component Staff Judge Advocates. Using a command post exercise or teleconferencing approach and available computer wargaming models, these joint teams can work together to revise and refine existing war plans. Without the distraction of normal daily operations, these exercises can provide a realistic and effective training opportunity for the operational staff and the key legal advisors in the command. In addition, Unified Commands must also make maximum use of scheduled Joint Training Exercises (with troops) and Service training programs such as the Army's Battle Command Training Program at Fort Leavenworth, Kansas, to promote a greater understanding of the joint operational environment and the role and responsibility of the legal advisor(s) therein.

To provide the most effective law of war training, the Unified Commands should consider modeling their programs after the United States Marine Corps' Law of War Training Program, an innovative approach which includes both line and legal officers. Conducted at

Marine Corps bases and facilities by a team of Marine officers with line and legal experience, this one-week program brings commanders, staff officers, and legal advisors together in an operational environment to discuss and analyze the legal issues which may arise in current and future operations.

To facilitate joint operational law training, a Joint Center for International and Operational Law should be established at The Army Judge Advocate General's School which currently has a Center for Law and Military Operations. That Center should coordinate Service "law school" curriculum to ensure that all judge advocates and lawyers receive basic and advanced training in current joint operational law doctrine and procedures. Further, the Center should be responsible for reviewing annual continuing legal education courses, the Joint Operations Seminar and Workshop, and other Unified Command and Service workshops and training programs to ensure that all Service judge advocates, lawyers and selected line officers have maximum effective joint training opportunities available.

In addition to joint operational law training, selected operational lawyers and judge advocates from each Service should attend Phase II of Joint Professional Military Education at the Armed Forces Staff College. Like their line counterparts, operational attorneys who have attended Intermediate Service Schools can enhance their value to the operational commander and staff by attending the "Joint and Combined Staff Officer School."⁷⁰ As operational attorneys responsible for advising their commanders,

these officers would gain a better appreciation for joint operations from the warfighting perspective. In addition, they would learn the "joint operational planning and execution system" along side the joint commanders and staff officers of the future. As a panel of flag officers (the Dougherty Board) in a report to the Chairman, Joint Chiefs of Staff on the Joint Professional Military Education system has stated, "all field grade officers in the Armed Forces should have an understanding of joint matters and knowledge of and confidence in all the Services."⁷¹

The Services must also ensure that key operational law assignments and billets require a final Top Secret clearance and access to Special Compartmented Information, and that all operational law attorneys obtain a Top Secret clearance early in their careers. By obtaining this clearance and serving in a billet which is authorized access to the highest levels of classified and sensitive information, the operational law attorney can ensure full access to the battle staff and the key operational plans and issues. In addition, the Services should also encourage more exchange training programs whereby an operational lawyer may work outside his or her own Service.

These exchanges can be on a permanent change of station basis, as when lawyers are assigned to the Unified Commands, or as instructors in another Service's "law school." They may also be on a temporary duty basis where an operational lawyer works with another Service on a "project," or on a joint staff as part of a Joint Task Force. They may also be for the length of an

operational deployment where, for example, an Army lawyer deploys along side a Navy judge advocate with a Carrier Battle Group.

Regardless of the scenario or length of exchange, these programs expose the operational lawyer to another Service's warfighting and operational legal issues. These exchange programs reinforce and validate, from a practical perspective, the officer's joint operational law training and experience to date. As part of an exchange program, the operational attorney provides legal support and services to a real joint warfighter in a real joint environment.⁷²

Rather than a formal International and Operational Law Specialty, each Service should continue to use an "informal" approach to the selection and assignment process. That approach should systematically prepare the operational attorney for increased responsibility in the joint operational law environment and ensure that the officer is qualified in Service non-operational law areas as well.⁷³ That approach should provide for the development of the operational law attorney from initial basic legal training through each phase of a successful military career.

After completion of initial training, each Service attorney (grades O-2 and O-3) should be assigned those duties which will best ensure Service-unique competency. Opportunities for operational law experience, joint training and interaction should not be ignored, but the new judge advocate must concentrate on Service qualification in areas such as administrative law, criminal law, legal assistance, and claims, not "operational law" specialization.

During the screening of those attorneys who are selected to remain beyond their initial obligations, the Services should identify those officers to be "groomed" for future Service-unique and joint operational law assignments. These officers (grade O-3) should continue to roundout their experience in the basic legal functional areas and should be provided increased opportunities to serve in Service operational law attorney positions. In addition to receiving continuing education in operational law matters, these operational law officers must gain practical experience by assisting in their Service's planning for and execution of joint training exercises and deployments.

Officers selected for "career status" (senior O-3 and O-4) should be provided the opportunity to attend the Army's Graduate Course, and then be considered for advanced civil schooling or alternative specialized instruction. Upon completion of this training, these operational attorneys should serve a utilization tour, either in a Service International and Operational Law Division, the International and Operational Law Directorate of the Joint Legal Services Agency, the Office of the Legal Advisor of a Unified Command, or in another international and operational law billet. The officer must also attend periodic joint continuing education courses at a Service or Joint "law school." To round out experience and qualification, each officer should also serve in non-operational law position(s), such as an action officer on the Service headquarters legal staff, or as a Deputy Staff Judge Advocate, or as the chief of a functional area in a legal office.⁷⁴

Successful mid-grade operational law attorneys (grades O-4 and O-5) should attend Intermediate Service Schooling. Thereafter, as many as practicable should attend the Joint and Combined Staff Officer School. Upon completion of this training, these officers should serve in at least one joint operational law assignment at a Unified Command, joint task force, or the International and Operational Law Directorate. While these officers should participate in other joint training and exchange programs, subsequent assignments also must include Service-unique staff and leadership positions, such as Staff Judge Advocate, chief of a functional area in large legal office (base or installation), and senior action officer on a Service headquarters legal staff.

Senior operational law attorneys (grade O-6) should attend Senior Service Schooling, either in residence or by correspondence.⁷⁵ These officers should be selected for key legal advisor positions on the Joint Staff and in the Unified Commands. These officers may also serve as the Chief of Operational Law Divisions at Service "law schools" or a Joint JAG School, at the Service Headquarters or at the International and Operational Law Directorate, or in a position in the Department of Defense. Subsequent assignments should also include Service-unique staff and leadership positions, such as Staff Judge Advocate, chief of a functional division on a Service headquarters legal staff, or division chief in one of the directorates of the Joint Legal Services Agency.

While there are other ways to approach this challenge, the

foregoing discussion does provide one approach by which the Service Judge Advocate General's Corps or Legal Departments may enhance their ability to provide operational law support in the joint environment. It provides a mechanism for translating Service-unique doctrine into joint operational law doctrine, and then disseminating and updating that doctrine. It considers required and recommended legal and non-legal training and provides a general plan for systematically delivering that training. Finally, it balances the need for properly preparing the Services' attorneys for joint operational law duties, with the recognition that every attorney should also be qualified and competent in Service-unique practice. Most importantly, it provides a constructive way for the Services to successfully move toward a joint operational law practice.

CONCLUSION

The Judge Advocate General's Corps of the Army, Navy, Marine Corps, and Air Force, and the lawyers of the Coast Guard have been presented with two formidable challenges.

First, they must systematically consolidate legal functions where appropriate, but not erode their ability to provide Service-unique legal support and services as well. Second, they must enhance the ability of each Service's operational lawyer to support the joint warfighting and peacetime competition environment of the future. They must ensure that the joint commander has an

operational lawyer, regardless of Service, who is capable of recognizing and advising on "land, sea, air and special operations" issues. As the preceding discussion has shown, these challenges are formidable, but not insurmountable.

Senator Nunn's challenge to consolidate may be addressed by the establishment of a Joint Legal Services Agency. Similarly, the Services may meet the operational law challenge by further refining their already successful Service-unique practice into a Joint Operational Law Practice. Neither approach may be a complete answer, but each enables the Services to meet the dual challenges on their own terms and timeline. Each provides the Services' Judge Advocate General's Corps or Legal Departments with an approach which is in the best interests of the United States.

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